# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 106

ETEL OBER and IOAN NAGYIVAN, PETITIONERS

*v.*

JAMES C. NAGY and JOSEPH NAGY

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO*

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## MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

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By order of the Court, dated May 29, 1967, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons stated below, we do not believe that it raises any federal question warranting review by this Court.

1. Theresa Kovacs died intestate in Ohio. Respondent James C. Nagy was appointed administrator of her estate and filed a petition in the probate court to determine heirship. Petitioners Ober and Nagyivan, residents and citizens of Romania, answered the petition, claiming inheritance rights as, respectively, dece-

dent's brother and niece. The other claimants to the estate were respondent James C. Nagy and his brother, respondent Joseph Nagy, residents of Ohio and nephews of the decedent (Pet. 3-4).

Hearings were held before a referee (Pet. App. 21). The evidence admitted at the hearings included various documents executed in Romania (Pet. App. 22-23), and authenticated by United States consular officers there (Pet. App. 23-25). The referee found, largely on the basis of two declarations of three Romanian citizens that petitioners were relatives of the decedent, that petitioners were decedent's brother and niece, and accordingly concluded that petitioners, as well as respondents, were entitled to share in the estate (Pet. App. 24-25).

The probate court modified the referee's finding "to find that [respondents] are the only heirs * * *" (Pet. App. 15). The court concluded that the record did not contain the type of proof required by Section 2123.05 of the Ohio Revised Code [1] to establish peti-

[1] That section provides:

> At the time assigned for the hearing of a proceeding set forth under section 2123.01 of the Revised Code, or at any time to which said hearing may be adjourned, the probate court may hear proof taken by commission, or by witnesses produced in open court, of the facts set forth in the petition, and shall, if satisfied from the evidence, find and adjudge who are or were the heirs or next of kin of the decedent, and entitled by the laws of this state to inherit the estate of the deceased, or the devisees or legatees named or unnamed in the will, which finding and adjudication shall be entered on the journal of the court, which entry, or a certified copy thereof, shall be prima facie evidence of the facts therein found.

tioners' heirship (Pet. App. 14). In particular, it stated that (Pet. App. 14-15):

> While hearsay evidence is very often admitted to prove heirship, or other relationship, a qualification of that rule is that before the declarations can be admitted the relationship of the declarant with the family must be established by some proof independent of the declaration itself, though but slight proof thereof will be required since that relationship may be as difficult to prove as the fact in controversy.

No proof, independent or otherwise, was offered to establish the relationship of the declarants with the family.

The Court of Appeals of Ohio affirmed the judgment of the probate court (Pet. App. 16), and the Supreme Court of Ohio dismissed the appeal (Pet. App. 17).

2. Petitioners maintain that the probate court's decision, holding the documents insufficient to establish their heirship, violates Article X of the 1881 Convention concerning the Rights and Privileges of Consular officers between the United States and Roumania (23 Stat. 711, 713, T.S. 297) (Pet. 12-13).[2]

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[2] That Article provides:

> Consuls-general, consuls, vice-consuls and consular agents may take at their offices, at their private residence, at the residence of the parties, or on board ship, the depositions of the captains and crews of vessels of their own country, of passengers on board of them, and of any other citizen of their nation. They may also receive at their offices, conformably to the laws and regulations of their country, all contracts between the citizens of their country and the citizens or other inhabitants of the country where they reside, and even all contracts between

We do not perceive any such violation.

The referee apparently found persuasive the two declarations by three Romanian citizens that petitioners Ober and Nagyivan were the brother and niece, respectively, of the decedent. The probate court viewed those two declarations as inadmissible because there had been no showing of the declarants' relationship to, or knowledge of, the decedent's family (see 5 Wigmore, *Evidence* §§ 1486-1487, 1489-1490 (3d ed. 1940)). We have been advised by the Department of State that, in its view, Article X was designed to insure that certain documents are not excluded from evidence simply on account of their foreign origin. That consideration is not present here. Rather, the Ohio courts held the declarations were hearsay and therefore inadmissible (or insufficient) to establish heirship—even had the documents been executed in Ohio. There is, accordingly, no occasion to consider whether the documents qualify as "official documents" within the meaning of Article X since, even if they possessed that status, the refusal of the Ohio courts to regard them as establishing as fact the matter asserted in them did not violate the Convention.

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the latter, provided they relate to property situated or to business to be transacted in the territory of the nation to which the said consular officer may belong.

Such papers and official documents of every kind, whether in the original, in copies or in translation, duly authenticated and legalized by the consuls-general, consuls, vice-consuls and consular agents, and sealed with their official seal, shall be received as legal documents in courts of justice throughout the United States and Roumania.

## CONCLUSION

For the foregoing reasons, we do not urge review.

THURGOOD MARSHALL,
*Solicitor General.*

AUGUST 1967

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